

§ 13.27

the appropriate TTB officer within the time periods set forth in this paragraph, the appellant may appeal as provided in § 13.27.

(c) *Judicial review.* Prior to applying to the Federal courts for review, an applicant must first exhaust his or her administrative remedies, including the appeal rights set forth in this section and § 13.27.

§ 13.27 Second appeal of qualification or denial.

(a) *Form of appeal.* The decision after appeal of qualification or denial may be appealed in writing to the appropriate TTB officer within 45 days after the date of that decision. If the appropriate TTB officer concludes that the qualified approval or denial was correct, a copy of the application, marked “appeal denied,” must be returned to the applicant, with an explanation of the decision and the specific laws or regulations relied upon in qualifying or denying the application. If the appropriate TTB officer concludes that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved without qualification, the applicant may resubmit TTB Form 5100.31 and the certificate will be issued.

(b) *Time limits for decision after second appeal.* Within 90 days of receipt of the second appeal, the appropriate TTB officer must notify the appellant whether the appeal has been granted or denied. If an applicant requests an informal conference as part of an appeal, as authorized in § 13.71, the 90-day period will begin 10 days after the date of the conference to allow for consideration of any written arguments, facts or evidence submitted after the conference. The appropriate TTB officer may extend this period of time once, by an additional 90 days, if he or she finds that unusual circumstances require additional time to consider the unique issues presented by an appeal. If the appropriate TTB officer extends the time period, he or she must notify the applicant by letter, briefly explaining the issues presented by the label. The decision made on the second appeal shall be the final decision of TTB.

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(c) *Judicial review.* An appeal to the appropriate TTB officer is required prior to application to the Federal courts for review of any denial or qualification of an application.

[T.D. ATF-406, 64 FR 2129, Jan. 13, 1999; T.D. ATF-406a, 64 FR 10949, Mar. 8, 1999, as amended by T.D. ATF-449, 66 FR 19086, Apr. 13, 2001]

Subpart D—Revocations of Specific Certificates

§ 13.41 Authority to revoke certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on TTB Form 5100.31, may be revoked by the appropriate TTB officer upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.42 Notice of proposed revocation.

Except as provided in § 13.51, when the appropriate TTB officer determines that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle that is not in compliance with the laws or regulations, he or she must issue to the certificate holder a notice of proposed revocation. The notice must set forth the basis for the proposed revocation and must provide the certificate holder with 45 days from the date of receipt of the notice to present written arguments or evidence why the revocation should not occur.

§ 13.43 Decision after notice of proposed revocation.

(a) *Decision.* After considering any written arguments or evidence presented by the certificate holder, the appropriate TTB officer must issue a decision. If the decision is to revoke the certificate, a letter must be sent to the holder explaining the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter of explanation must be sent.